

AN ACT

ENTITLED, An Act to revise certain provisions regarding amounts payable under reinsurance contracts in liquidation proceedings of insurers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 58-29B-94 be amended to read as follows:

58-29B-94. The amount recoverable by the liquidator from reinsurers may not be reduced as a result of delinquency proceedings, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance is payable under a contract reinsured by the reinsurer on the basis of reported claims allowed in the liquidation proceeding or proof of payment of the claim by a guaranty association, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator unless:

- (1) The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
- (2) The reinsurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the reinsurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees. The consent of the liquidator is required for any such assumption of policy obligations effected after an order of liquidation.

Section 2. That chapter 58-29B be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding § 58-29B-94, if a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of

reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer discharges the reinsurer of any further liability to any other party for the claim payment.

Section 3. That § 58-14-4 be amended to read as follows:

58-14-4. No credit may be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance is payable under a contract reinsured by the reinsurer on the basis of reported claims allowed in the liquidation proceeding or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator unless:

- (1) The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
- (2) The reinsurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the reinsurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees. The consent of the liquidator is required for any such assumption of policy obligations effected after an order of liquidation.

Section 4. That chapter 58-14 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding § 58-14-4, if a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of

reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer discharges the reinsurer of any further liability to any other party for the claim payment.

Section 5. That chapter 58-14 be amended by adding thereto a NEW SECTION to read as follows:

The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the reinsurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defenses that it deems available to the ceding insurer or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer as a Class 6 claim pursuant to § 58-29B-124 to the extent of a proportionate share of the benefit that may accrue to the ceding insurer solely as result of the defense undertaken by the reinsurer. If two or more reinsurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1188

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1188
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State